HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO.2063 OF 2006.

PETITIONER Nahid Khan,
S/o Shri Gulam Mohd. Khan,
Aged about 24 years,
Occupation – Fish Contractor
R/o Noorani Chowk, Raja Talab
Raipur (C.G.)

Vs.

RESPONDENTS

1. State of Chhattisgarh,
Through Secretary, Department
Of Fisheries, Mantralaya, D.K.S.
Bhawan, Raipur (C.G.)
2. Director,
Directorate of Fisheries,
Telibandha, Near Railway Crossing,
Raipur (C.G.)
3. Collector,
Bilaspur (C.G.)
4. Deputy Director,
Fisheries, Bilaspur (C.G.)

Present : Mr. Prashant Jayaswal, learned Sr. Counsel with Shri Ali Asgar, learned counsel for the petitioner.
Mr. Vinay Harit, learned Dy. A.G. for the State.

ORAL ORDER
(Passed on 20th April, 2006)

The fishing right in a tank, popularly called, 'Khunta Ghat' is leased by the 2nd respondent herein, in favour of the petitioner for a period of 5 years vide lease agreement dated 09.08.2005. The complaint of the petitioner, in this writ petition, is that the promise made by the Fisheries Department, at the time of granting the lease, was that the catchments area is 2712 hectare and fish production would be 111.488 metric tons per year, whereas, by subsequent action of the respondent, the water level of the reservoir and catchments area has been drastically reduced to half of what has been promised. The water

level of the reservoir has been reduced to 52 feet from 65 feet. It is complained that due to this change brought about from the situation that had obtained on the day of granting the lease, the petitioner would suffer a great loss. In the premise of the above allegation, the petitioner has filed this writ petition under Article 226 praying for the following reliefs:-

7. RELIEF(S) SOUHGT:

7.1 The petitioner above named most respectfully prays to this Hon'ble Court to call for the entire records.

7.2 The petitioner above named most respectfully prays to the Hon'ble Court to issue writ mandamus directing the respondents to reduce periodical lease amount on the basis of the reduced catchment area.

7.3 The petitioner above named most respectfully prays to the Hon'ble Court to issue writ of mandamus directing the respondents to grant relaxation in payment of the periodical lease amount.

7.4 The petitioner above named most respectfully prays to the Hon'ble Court to issue writ of the mandamus and appropriate direction, directing the respondents to grant compensation to the petitioner.

7.5 The petitioner above named most respectfully prays to the Hon'ble Court to issue writ of mandamus and appropriate directions, directing the respondents to charge lease amount as per the actual fish production in the water reservoir.

7.6 Any other relief, which may be suitable in the facts and circumstances of the case, may also be granted.

It needs to be noticed that the contract between the parties is an ordinary contract. The problems have cropped up in implementation of the contract and during the currency of the contract. In order to grant relief to the petitioner, it becomes

imperative for the Court to permit the parties to lead evidence and subject the parties to cross-examine by each other. The allegations made by the petitioner squarely fall within the domain of facts. There is hardly any law question to be decided. The dispute brought before the Court cannot be resolved in a summary proceeding on the basis of affidavits and counter affidavits only. This Court cannot be converted into a trial Court to undertake the resolution of disputed facts. In that view of the matter, I am not inclined to entertain this writ petition. Therefore, the writ petition is dismissed. However, this order shall not come in the way of the petitioner from working out legal remedies by way of private law review remedies available to him before the jurisdictional civil Court. No costs.

Sd/-
Chief Justice